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1947.

File No. Pri-Edu-Bom. II

47



Legal DEPARTMENT

A BRANCH

Subject:—

MS. 1915

*P-18
E.*

*Rules and Notifications under
Bombay Primary Education
Act, 1928.*

File No. Pri-Edu-Bom. II
Std. Sectt. Slip 24 B a.

241-B

C O N T E N T S.

Legal Department File No. Primary Education Bombay.II/47.

Sr.	Compilation.	Subject.	Pages.
No.	No.		

Bombay Primary Education Act, 1928.

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|----|--|---|----|
| 1. | UR to E&I.D.No.211-
Confl.Dated 15/5/47. | Constitution of Board. | 1. |
| 2. | UR.to E & I.D.No.
5717 dated 31/5/47. | <u>S.27.</u> Regulation for
determining pay and
terms of employment
of the supervising
staff. | 3. |
| 3. | UR to E & I.D.No.
6810 dated 2/7/47. | <u>S.6 (2)</u> Management
of schools by L.A.S. | 5. |
| 4. | U.R. to E & I.D.No.
12072 dated 15/12/47. | <u>S.27</u> Competing L.A.
to frame Regulations. | 7. |

E.K.N.11/5/
S C.

14/5

Office of the R.L.A.

The proposed draft order at p.87, as formally amended is in order. It is so discreetly worded as to satisfy the requirements of section 26C(1) of the Bombay Primary Education Act, 1923, without inviting pointed attention to the illegality in the constitution of the Board. The attention of the Education and Industries Department is also invited to section 26C(3) of the said Act.

~~(Sd)~~ D.V.Vyas. P.M.L.

Remembrancer of Legal Affairs.

U.R. to E.&I.Deptt., No.211-Confl., dated the 15th May 1947.

E.K.N.11/5/

4 C.

Office of the R.L.A.

Under section 27(1) (b) of the Bombay Primary Education Act, 1923, the Provincial Government can make rules regulating inter alia the maximum and minimum pay, pension, provident fund, grant of leave and other conditions of service of the supervising staff. Under section 27(3)(d) regulations can be made by a local authority determining the pay and terms of employment of the supervising staff. The expression "conditions of Service" in section 27(1)(b) would not include the duties of such staff which would fall within the expression "terms of employment" in section 27(3)(d). The proposed rule which lays down the duties of attendance officers would not therefore be intra vires section 27(1)(b) of the Act. The object of prescribing the duties of such officers can only be achieved by the local authority making the necessary regulations in the matter.

2. It is true that rule 4 of the Bombay Primary Education Rules, 1924, provides that a local authority shall make adequate provision for the teaching, supervising, clerical and inferior staff, and that the pay and terms of employment generally of all members of these staffs shall be determined by the Primary Education Rules and by the regulations made by the local authorities under section 27(3)(d). However this rule contemplates the making of rules regarding pay and of regulations regarding terms of employment. If it was intended that the terms of employment could also be prescribed by rules to be made by the Provincial Government the reference to regulations to be made by local authorities under section 27(3)(d) of the Act would not have found place there.

3. The draft notification at pp. 15-16 ante is not therefore in order.

21/- P.M.L.
~~(sd) D.V. Vyas.~~

Remembrancer of Legal Affairs.

U.R. to E. & I. Deptt. No. 5717 dated the 31st May 1947.

Office of the R.L.A.

A revised draft notification is sent herewith.

2. It is not necessary to state in the preamble to the notification as proposed by the Education and Industries Department that the Government is satisfied as regards the competence of the Municipality to manage its own schools. The proposed preamble is therefore omitted from the revised draft.

3. Under sub-section (2) of section 6 of the Bombay Primary Education Act, 1923, if any Municipality is authorised to *schools had been transferred has to retransfer the schools to such* manage its own schools, the Local Authority to which/Municipality on a date to be notified by the Provincial Government. All that therefore the Provincial Government has to do under sub-section (2) is to authorise the Municipality concerned to manage its own schools and to notify a date for the purposes of the said sub-section (2). No direction to the Local Authority to transfer to the Municipality primary schools with their lands etc. is necessary. The revised draft notification does not accordingly provide for any such direction.

4. It is presumed that 1st August 1947 and not 1st August 1948 is the date intended to be notified under section 6(2).

(sd) D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to E. & I.D. No. 6810 dated the 2nd July 1947.

E.K.N.11/5/

Office of the R.L.A.

There is no provision in section 27 of the Bombay Primary Education Act, 1923, empowering Government to compel a local authority to frame regulations under any of the provisions of section 27(3). The proposed rule is therefore outside the provisions of section 27(1) of the said Act. As pointed out in R.L.A.'s opinion No. 5717, dated the 30th May 1947 at page 17, under the Act the object of prescribing the duties of the attendance officers can be achieved only by the local authority making ^{the} necessary regulations in the matter.

2. That Act, however, will soon stand repealed as the Bombay Primary Education Bill, has been passed by both the Chambers of the Bombay Legislature and it will be shortly enacted into an Act. Sub-clause (4), read with sub-clause (1), of clause 20 and clause 63(2)(j) of the Bill empower the provincial Government to prescribe the duties to be performed by Attendance Officers. The requisite rules in the at behalf can, therefore, be made after the Bill is enacted into an Act.

sd/- P.M.L.

~~(sd) D.V. Vyas.~~

Remembrancer of Legal Affairs.

E.K.N.11/5/

U.R. to E.& I.D. No. 12072 dated the 15th December 1947.